

UNITED STATES DISTRICT COURT
DISTRICT OF VERMONT

GU MARKETS LLC :
 :
 v. : CIVIL NO. 1:01CV288
 :
 SUPERMARKET EQUIPMENT RESALE, :
 INC. and TOMMY BREEDLOVE :
 :
 _____ :

RULING ON MOTION TO AWARD PREJUDGMENT INTEREST
(Paper 169)

On August 21, 2003, the jury returned a verdict in which it awarded GU Markets \$718,500 in damages for Supermarket Equipment Resale's ("SER") breach of contract and \$250,000 as a result of SER's breach of fiduciary duty. Special Interrogatories and Verdict Form (Paper 172). Citing 9 V.S.A. § 41a, GU Markets seeks prejudgment interest on the jury's award.

"Vermont law provides for the award of prejudgment interest as part of a judgment." J.A. McDonald, Inc. v. Waste Systems Int'l Moretown Landfill, Inc., 247 F. Supp. 2d 542, 547 (D. Vt. 2002) (footnote omitted) (citing V.R.C.P. 54(a)). Pursuant to 9 V.S.A. § 41a(a), "the rate of interest or the sum allowed for forbearance or use of money shall be twelve percent per annum computed by the actuarial method."

Under Vermont law, an award of prejudgment interest is mandatory where damages are readily ascertainable and discretionary in other cases. Estate of Fleming v. Nicholson,

168 Vt. 495, 500 (1998). Damages can be ascertained where, for example, "the court ha[s] sufficient evidence before it to conclude that there was a determinate sum of money due to the plaintiff at a specific time, and that the plaintiff had suffered from the delay in payment of that sum." Id. at 503.

Under the applicable standard as provided by Vermont law, the plaintiff is entitled to prejudgment interest on the jury's breach of contract award. "In breach of contract cases, damages are to be measured at the time of the breach with interest to the date of judgment." Winey v. William E. Dailey, Inc., 161 Vt. 129, 141 (1993); accord Smith v. Osmun, 165 Vt. 545, 548 (1996).

Here, the parties' contract authorized SER "to sell at public auction and/or liquidation sale (during the sale period of April 1 through April 30, 2001 . . .)" certain of the plaintiff's furniture, fixtures, and equipment. The contract further provides that SER, "within ten days following the auction/liquidation, [will] remit to [GU Markets]: (a) the total sales tax collected from purchasers and b) to the extent that the gross proceeds from the auction/liquidation (excluding sales tax) exceeds the expenses of the liquidation, 50% of such excess." See Agreement (appended to Amended Complaint as Ex. A.) Under the terms of the parties' agreement, the \$718,500 in proceeds were due and payable 10

days after the last sale day, or on May 10, 2001. The plaintiff, therefore, is entitled to prejudgment interest on the jury's award for breach of contract, calculated from May 10, 2001 through the date of judgment.

The Court will not award prejudgment interest on the portion of the jury's award attributable to its finding that the defendant breached its fiduciary duty. That portion of the verdict does not represent an amount readily ascertainable at a particular time of default. Furthermore, "a court may use its discretion to award prejudgment interest [where such interest is not otherwise available as of right] where a reasonable and established method can be used to calculate the prejudgment interest." McDonald, 247 F. Supp. 2d at 548.

In this case, the Court charged the jury that it could base its verdict after finding one or more fiduciary duties which an agent may owe its principal. See Jury Charge at 16-17. These duties included "acting in good faith," "acting with loyalty," and others which do not lend themselves to easy calculation or a determination of particular time of default. Accordingly, an award of prejudgment interest on the jury's award of \$250,000 for breach of fiduciary duty is not appropriate.

The Motion for Prejudgment Interest is GRANTED in part. The Clerk is directed to enter judgment in favor of GU

Markets, LLC in the total amount of \$1,169,758.84. This represents: (1) \$718,500 in damages as a result of SER's breach of contract; (2) prejudgment interest in the amount of \$201,258.84, computed at 12% per annum from May 10, 2001 to the date of this order; and (3) \$250,000 in damages as a result of SER's breach of fiduciary duty.

SO ORDERED.

Dated at Brattleboro, Vermont, this ____ day of September, 2003.

J. Garvan Murtha
United States District Judge